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November 2, 1995

Dear \_\_\_\_\_,

This is in response to your letter dated July 17, 1995 regarding the application of tax to your purchase of mobile water purification units and related pieces of equipment. You state:

"On August 3, 1993, \_\_\_\_\_ purchased substantially all the property of the \_\_\_\_\_. The purchase consisted of mobile water purification units, related pieces of equipment and their customer list along with rights to the name. I would like to receive a clarification/opinion as to whether sales tax applies, particularly with regard to the mobile equipment. \_\_\_\_\_ was not assessed any taxes at the time of purchase and I believe based on the circumstances surrounding the use and structure of the mobiles; taxes should not apply.

"Mobiles are the primary pieces of equipment used in providing water purification services. They are used to provide temporary services and are mounted, and maintained, on semi-trailers for the purpose of transportation to the customer. As such, I believe it is correct to view the mobiles as equipment and not vehicles since they are not designed for, and cannot be used as, transportation for people or hauling. The State of California has already ruled that billings for the rental of these mobiles is classified as a service and therefore not taxable.

"Since taxes do not flow from this equipment in the normal course of business, I believe it would be correct to interpret a one-time sale of the mobiles (such sale being out of the ordinary course of business) would not be subject to taxation."

**DISCUSSION**

Our understanding is that your question pertains to the application of tax to the sale price of the property sold to you by \_\_\_\_\_, not to charges to your customers. That is, you ask whether the sale of the property to you might be considered exempt from tax because it is a one-time sale not in the ordinary course of business.

A retailer owes sales tax on its sales of tangible personal property in California, measured by gross receipts, unless the sales are specifically exempt from tax by statute. (Rev. & Tax. Code § 6051.) The retailer may collect reimbursement for its sales tax liability from the purchaser if the contract of sale provides for such reimbursement. (Civ. Code § 1656.1.) When sales tax does not apply, the use tax,

measured by the sales price of the property sold, applies to the use of property purchased from a retailer for storage, use, or other consumption in California, unless such use is specifically exempt from tax by statute. (Rev. & Tax. Code §§ 6201,6401; Reg. 1620.)

Revenue and Taxation Code section 6367 provides an exemption from tax for an "occasional sale" of tangible personal property other than vehicles, vessels, and aircraft. If the property about which you inquire constitutes vehicles, the exemption set forth in section 6367 does not apply. Further, section 6006.5(a) defines "occasional sale" as a sale of property not held or used by a person in the course of activities for which the person is required to hold a seller's permit. Our records indicate that \_\_\_\_\_ has been engaged in the business of equipment leasing, for which it is required to hold, and does in fact hold, a seller's permit. Since it appears that the property was used in the course of an activity requiring the holding of a seller's permit, the section 6367 exemption does not apply, without regard to whether the property sold to you constitutes vehicles. Since there does not appear to be any other basis for exemption from tax, the sale to you is subject to tax. Whether that tax is the sales tax or the use tax is discussed below.

Sales tax does not apply to the sale of a vehicle not sold by a dealer. (Rev. & Tax. Code § 6282; Reg. 1610(b).) We assume that \_\_\_\_\_ is not a dealer of vehicles. Thus, if the property in question constitutes vehicles, would not have owed sales tax on its sales of those vehicles to you, and would therefore not have collected sales tax reimbursement from you on the transfer. Instead, you would owe use tax on the purchase price of vehicles you purchased for use in California. (Reg. 1610(b)(1)(C).)

Regulation 1610(a)(1) explains that "vehicle" means:

"(A) Any device by which any person or property may be propelled, moved or drawn upon a highway, excepting a device moved by human power or used exclusively upon stationary rails or tracks and excepting a device that is not required to be registered under the Vehicle code. 'Vehicle' does not include a mobilehome or commercial coach required to be registered under the Health and Safety Code. 'Vehicle' includes trailer coaches which are required to be registered with the Department of Motor Vehicles.

"(B) Off-highway motor vehicles subject to identification under Division 16.5 (commencing with Section 38000) of the Vehicle Code."

You state that "\_\_\_\_\_ was not assessed any taxes at the time of purchase." I assume you mean that \_\_\_\_\_ did not collect reimbursement from you on the purchase price of the property. As explained above, this is consistent with \_\_\_\_\_ having regarded the property as constituting vehicles.

Although it is not clear from the limited description provided to us in your letter, it is our understanding that the mobile water purification units"(MWPU's) are designed for the purpose of being attached to the semi-trailers, and that upon the attachment of the MWPU's to the semi-trailers, the units become an integral part of the semi-trailers. If such is the case, then as parts of such vehicles, the MWPU's essentially become "vehicles" themselves. (See Pan American World Airway. Inc. v. State Board of Equalization (1955) 131 Cal.App.2d 638, 642; Flying Tiger Line v. State Board of Equalization (1958) 157 Cal.App.2d 85.) Thus, it appears that with respect to your purchase of the MWPU's, you owe use tax measured by your purchase price of such property.

You indicate your belief that "[t]he State of California has already ruled that billings for the rental of these mobiles is classified as a service and therefore not taxable." There is no exemption from tax that applies to the use of tangible personal property to provide a service. Thus, your belief that you use the vehicles to provide a service is consistent with our conclusion that you owe use tax on your use of the vehicles. "

In summary, based on the limited information you have provided and the assumptions set forth above, we conclude that you owe use tax measured by the purchase price of the MWPU's.

If you have further questions, please feel free to write or call me at the telephone number or address listed above. If you do write again, please provide a detailed description of the MWPU's, and explain how and when they are attached to the semi-trailers. Please also provide copies of any relevant contracts.

Sincerely,

Kelly W. Ching  
Staff Counsel